



National Labor Relations Board

Weekly Summary

of

NLRB Cases

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CASES SUMMARIZED
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ABB, Inc.	Jefferson City, MO	2
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The Weekly Summary of NLRB Cases is prepared by the NLRB Office of Public Affairs. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board. The case summaries constitute no part of the opinions of the Board. The Office of Public Affairs has prepared them for the convenience of subscribers.

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ABB, Inc. (14-CA-29219; 355 NLRB No. 2) Jefferson City, MO, Jan. 22, 2010. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) by unilaterally changing the job description for Code 18 electronic electricians without prior notice to Local 2379, United Automobile, Aerospace, and Agriculture Workers of America (Union). In April 1999, the Respondent changed some job descriptions, including the job description for the Code 18 electronic electrician. The Union first learned of the 1999 job description change about July 17, 2007. It twice requested negotiations about the job description after an employee was suspended pending investigation for refusing to perform duties contained in the job description. The Respondent refused to bargain about the change. [\[HTML\]](#) [\[PDF\]](#)

The Board adopted the judge's analysis that, as a general proposition, an employer violates Section 8(a)(5) if, without bargaining to impasse or obtaining a waiver, it effects a unilateral change to existing terms and conditions of employment. The judge found a lack of credible evidence that the Respondent notified the Union of changes to the job description or that it provided the Union with copies of the revised job description before July 2007. The judge found that the Respondent unilaterally changed the Code 18 electronic electrician job description, as implemented, on July 17, 2007, and unlawfully refused on July 26 and August 10, 2007, after being requested by the Union, to bargain about it.

The judge also rejected the Respondent's defense that the unfair labor practice charge was time-barred by Section 10(b). He further found that the Union did not waive its right to bargain over the substance of the April 1999 revisions because the Union never clearly and unmistakably waived its right to negotiate job descriptions. Member Schaumber, in a personal footnote, noted that, although he adheres to the position that the Board should instead apply a "contract coverage" test in these circumstances, he acknowledges that the "clear and unmistakable waiver" standard is extant Board law and he applied it for the purpose of deciding this case.

(Chairman Liebman and Member Schaumber participated.)

Charge filed by United Automobile, Aerospace & Agricultural Implement Workers of America Local 2379; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Jefferson City, June 1-2, 2009. Adm. Law Judge William N. Cates issued his decision Sept. 4, 2009.

International Association of Machinists and Aerospace Workers District Lodge 160, Local Lodge 289 (SSA Marine, Inc.) (19-CD-502; 355 NLRB No. 3) Seattle, WA, Jan. 22, 2010. In this jurisdictional dispute proceeding under Section 10(k) of the Act, the Board found that there was reasonable cause to believe that Section 8(b)(4)(D) had been violated. There were competing claims to the work in dispute, and there was no agreed-upon method for the voluntary adjustment of the dispute. The Board awarded the work in dispute to employees, represented by the International Longshore and Warehouse Union (ILWU) rather than the employees represented by the International Association of Machinists and Aerospace Workers District Lodge 160, Local Lodge 289 (IAM). The Board relied on the factors of employer preference and

economy and efficiency of operations, finding that those factors outweighed the factors that favored an award to IAM-represented employees: past practice and collective-bargaining agreements, the latter of which the Board found favored the IAM only slightly. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Liebman and Member Schaumber participated.)

**UNPUBLISHED BOARD DECISIONS AND ORDERS
IN REPRESENTATION CASES**

*(In the following case, the considered exceptions to
the Report of the Regional Director or Hearing Officer)*

A-Para Transit Corporation, Hayward, CA, 32-RC-05690, Jan. 22, 2010.
(Chairman Liebman and Member Schaumber)

*(In the following case, the Board adopted the Report of the
Regional Director or Hearing Officer in the absence of exceptions)*

DECISION AND DIRECTION [that Region Director open and count ballots]

Murphy Bus/Durham School Services, Middletown, NJ, 22-RC-13039, Jan. 21, 2010.

*(In the following cases, the Board denied the requests for review
of the Decisions and Directions of Elections (D&DE) and
Decisions and Orders (D&O) of the Regional Directors)*

Altura Communications Solutions, Fullerton, CA, 13-UC-00422, Jan. 22, 2010.
(Chairman Liebman and Member Schaumber)

Modern Transportation Services, Inc. and TSL, LTD., Joint Employer, Pittsburgh, PA,
6-RC-12706, Jan. 22, 2010. (Chairman Liebman and Member Schaumber)
Scully Distribution Services, Inc., West Sacramento, CA, 32-RC-05694, Jan. 22, 2010.
(Chairman Liebman and Member Schaumber)

Miscellaneous Board Decision and Order

**CERTIFICATION OF REPRESENTATIVE AS BONA FIDE
UNDER SECTION 7(B) OF THE FAIR LABOR STANDARDS ACT OF 1938**

Pennsauken Sewerage Authority, Pennsauken, NJ, 4-WH-1, Jan. 22, 2010.

DECISIONS OF ADMINISTRATIVE LAW JUDGES

*Metro Mayaguez, Inc. d/b/a Hospital Perez (Unidad Laboral de Enfermeras (OS)
Y Empleados Perea) Mayaguez, PR Jan. 19, 2010. 24-CA-11016, et al.; JD-02-10,
Judge Michael A. Rosas.*

*Allstate Power Vac, Inc. (Laborers 78) Brooklyn, NY Jan. 22, 2010. 29-CA-28264, et al.;
JD(NY)-01-10, Judge Raymond P. Green.*
